

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Acapulco Car Service, Inc.)	
Brooklyn, New York)	File No. EB-02-NY-129
)	NAL/Acct. No. 200332380002
)	FRN 0004-5052-44
)	

FORFEITURE ORDER

Adopted: January 7, 2004

Released: January 9, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of four thousand dollars (\$4,000) to Acapulco Car Service, Inc. ("Acapulco"), licensee of station WPRJ622, Brooklyn, New York, in the Wireless Radio Service for willful and repeated violation of Section 1.903(a) of the Commission's Rules ("Rules").¹ The noted violation involves Acapulco's operation of radio transmitting equipment on unauthorized frequency 36.50 MHz.

2. On October 8, 2002, the District Director of the Commission's New York, New York Office ("New York Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Acapulco in the amount of four thousand dollars (\$4,000).² Acapulco filed a response to the NAL.

II. BACKGROUND

3. On July 9, 2002, Commission agents, using a mobile direction finding vehicle, monitored frequencies 35.80 MHz and 36.50 MHz in Brooklyn, New York, to assess compliance in the Private Land Mobile Radio Service. The agents determined that Acapulco operated mobile radio units on frequency 36.50 MHz, although they were licensed to operate on frequency 35.80 MHz.

4. On July 10, 2002, Commission agents, using a mobile direction finding vehicle, monitored frequencies 35.80 MHz and 36.50 MHz in Brooklyn, New York. Again the agents determined that Acapulco operated mobile radio units on frequency 36.50 MHz. Also on July 10, 2002, the agents conducted an inspection of station WPRJ622 and confirmed that, although Acapulco's base transmitter was operating on authorized frequency 35.80 MHz, the mobile radio units were operating on unauthorized frequency 36.50 MHz.

¹ 47 C.F.R. § 1.903(a).

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332380002 (Enf. Bur., New York Office, released October 8, 2002).

5. On October 8, 2002, the District Director of the New York Office issued a *NAL* to Acapulco. In its response, Acapulco requests reduction or cancellation of the proposed forfeiture. Acapulco states that it was unaware that it was using an unauthorized frequency. Acapulco further states that the unauthorized frequency was installed, unbeknownst to it, by a communications company to solve a problem Acapulco was having with background noise from drivers. Finally, Acapulco states that it has programmed its equipment to operate only on its licensed frequency.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),³ Section 1.80 of the Rules,⁴ and *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.⁵ In examining Acapulco’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

7. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. On July 9 and 10, 2002, Acapulco operated its mobile radio units on frequency 36.50 MHz, an unauthorized frequency. We find that Acapulco willfully⁷ and repeatedly⁸ operated in violation of Section 1.903 of the Rules. In its response to the *NAL*, Acapulco indicated that an independent contractor may have been responsible for the unauthorized operation. However, “the Commission has long held that licensees and other Commission regulates are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations.”⁹ Finally, although Acapulco states that it has programmed its equipment to operate only on its licensed frequency, we note that remedial actions taken to correct the violation, while commendable, are not mitigating factors.¹⁰

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is “repeated” if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn 56 (2003).

⁹ See, e.g. *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) (internal quotation marks omitted) and cases cited therein.

¹⁰ See, e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973).

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹¹ Acapulco Car Service, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of four thousand dollars (\$4,000) for its willful and repeated operation of radio transmitting equipment on an unauthorized frequency on July 9 and 10, 2002 in violation of Section 1.903(a) of the Rules.

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹² Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332380002 and FRN 0004-5052-44. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Acapulco Car Service, Inc., 4911 8th Avenue, Brooklyn, New York 11220.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹² 47 U.S.C. § 504(a).

¹³ See 47 C.F.R. § 1.1914.